

SUPREME COURT OF WISCONSIN

State v. Leitner

Leitner, 253 Wis. 2d 449 (Wis. 2002) · No. 00-1718-CR · Decided June 26, 2002

SUMMARY

The Supreme Court of Wisconsin held that Wis. Stat. § 973.015 authorizes expunction of court records only and does not require district attorneys or law enforcement agencies to expunge records documenting the underlying facts of an expunged conviction. The court further held that a sentencing court may consider those underlying facts when sentencing an offender for a subsequent offense. The court affirmed the court of appeals.

CASE DETAILS

COURT	Supreme Court of Wisconsin
WRITING FOR THE COURT	Shirley S. Abrahamson, Chief Justice
JURISDICTION	Wisconsin
DECIDED	June 26, 2002
DOCKET	00-1718-CR
DISPOSITION	affirmed
PROCEDURAL POSTURE	Review of a published court of appeals decision affirming a La Crosse County circuit court order denying resentencing and affirming the defendant's judgment of conviction.
STANDARD OF REVIEW	Statutory interpretation and application of a statute to undisputed facts are questions of law reviewed independently, while benefiting from the analyses of the circuit court and court of appeals. A defendant is entitled to resentencing when a sentence is affected by reliance on an improper factor.
PRECEDENTIAL VALUE	Published, precedential Wisconsin Supreme Court opinion
PARTIES	Anthony J. Leitner, Defendant-Appellant-Petitioner v. State of Wisconsin, Plaintiff-Respondent

TOPICS

statutory interpretation

sentencing

criminal procedure

evidence

legislative intent

PRACTICE AREAS

Criminal law

Criminal procedure

Sentencing

Statutory interpretation

Evidence

QUESTIONS PRESENTED

1. Whether Wisconsin Statute section 973.015 requires district attorneys and law enforcement agencies to expunge records documenting the facts underlying a court record of a conviction expunged under that statute.
2. Whether a circuit court may consider, when sentencing an offender for a subsequent offense, the facts underlying a record of a conviction expunged under Wisconsin Statute section 973.015.
3. Whether the court should reach the merits despite the possibility that Leitner had completed his sentence and the case was moot.

HOLDINGS

1. Wisconsin Statute section 973.015 authorizes expunction of court records only and does not require district attorneys or law enforcement agencies to expunge records documenting the facts underlying an expunged conviction.
2. Although a sentencing court may not consider the expunged court record of a prior conviction, it may consider information about the facts underlying that conviction when the information is maintained in governmental files and is otherwise relevant to sentencing.
3. The court may decide the merits of an otherwise potentially moot case when the issues are likely to arise again and should be resolved to avoid future uncertainty.

KEY QUOTATIONS

“But nothing in the language or history of § 973.015 indicates that the legislature intended record expunction under § 973.015 to wipe away all information relating to an expunged record of a conviction or to shield a misdemeanor from all of the future consequences of the facts underlying a record of a conviction expunged under § 973.015.” (253 Wis. 2d at 471-472)

“We further conclude that the circuit court may consider, when sentencing an offender, the facts underlying a record of conviction expunged under § 973.015.” (253 Wis. 2d at 476)

FACTUAL BACKGROUND

Leitner pleaded no contest to reckless driving causing great bodily harm under a plea agreement that reduced his maximum prison exposure. A presentence investigation report identified two 1997 convictions related to an alcohol-related hit-and-run incident, although the court records of those convictions had been expunged. At sentencing, the prosecutor and defense counsel discussed the underlying facts, and the circuit court considered those facts in imposing a fifteen-month prison sentence, but did not consider the expunged convictions themselves.

PROCEDURAL HISTORY

Leitner pleaded no contest pursuant to a plea agreement to reckless driving causing great bodily harm after initially being charged with hit and run causing great bodily harm. The circuit court sentenced him to fifteen months in prison after considering facts underlying two expunged prior convictions. The court of appeals affirmed, and the Wisconsin Supreme Court granted review, reached the merits despite a potential mootness issue, and affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Leitner, 2001 WI App 172, 247 Wis. 2d 195, 633 N.W.2d 207
- State ex rel. La Crosse Tribune v. Circuit Court for La Crosse County, 115 Wis. 2d 220, 340 N.W.2d 460 (1983)
- Warren v. Link Farms, Inc., 123 Wis. 2d 485, 368 N.W.2d 688 (Ct. App. 1985)
- State ex rel. Hensley v. Endicott, 2001 WI 105, 245 Wis. 2d 607, 629 N.W.2d 686
- State v. Santiago, 206 Wis. 2d 3, 556 N.W.2d 687 (1996)
- Lenz v. L.E. Phillips Career Development Center, 167 Wis. 2d 53, 482 N.W.2d 60 (1992)
- In the Matter of G.S. v. State, 118 Wis. 2d 803, 348 N.W.2d 181 (1984)
- State v. Seymour, 24 Wis. 2d 258, 128 N.W.2d 680 (1964)
- State v. Gray, 225 Wis. 2d 39, 590 N.W.2d 918 (1999)
- Fine v. Elections Board of the State of Wisconsin, 95 Wis. 2d 162, 289 N.W.2d 823 (1980)
- State ex rel. Jacobus v. State, 208 Wis. 2d 39, 559 N.W.2d 900 (1997)
- State v. Anderson, 160 Wis. 2d 435, 466 N.W.2d 681 (Ct. App. 1991)
- In the Interest of E.C., 130 Wis. 2d 376, 387 N.W.2d 72 (1986)
- State v. Sartin, 200 Wis. 2d 47, 546 N.W.2d 449 (1996)
- State v. Koput, 142 Wis. 2d 370, 418 N.W.2d 804 (1998)
- State v. Kruse, 101 Wis. 2d 387, 305 N.W.2d 85 (1981)
- National Exchange Bank of Fond du Lac v. Mann, 81 Wis. 2d 352, 260 N.W.2d 716 (1978)
- Weiss v. Holman, 58 Wis. 2d 608, 207 N.W.2d 660 (1973)
- Racine Education Association v. WERC, 2000 WI App 149, 238 Wis. 2d 33, 616 N.W.2d 504
- Dairyland Fuels, Inc. v. State, 2000 WI App 129, 237 Wis. 2d 467, 614 N.W.2d 829
- Milwaukee County v. DILHR, 80 Wis. 2d 445, 259 N.W.2d 118 (1977)
- Harris v. State, 75 Wis. 2d 513, 250 N.W.2d 7 (1977)
- Elias v. State, 93 Wis. 2d 278, 286 N.W.2d 559 (1980)
- State v. Bobbitt, 178 Wis. 2d 11, 503 N.W.2d 11 (Ct. App. 1993)
- State v. Williams, 2002 WI 1, 249 Wis. 2d 492, 637 N.W.2d 733

